IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8588 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BABULAL BHAGWANRAM BISNOI

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

MR SAMIR DAVE, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 06/10/2000

ORAL JUDGEMENT

1. The order of detention dated 8/6/2000 passed by the District Magistrate, Kutch at Bhuj in exercise of powers conferred on him by sub-section (2) of section 3 of the Gujarat Prevention of Anti-Social Activities, Act,

1985 ('the Act' for short) against the detenu is subject matter of challenge in the present petition which is filed under Article 226 of the Constitution of India.

2. From the grounds of detention it is apparent that the detaining authority has taken into consideration two cases registered against the detenu under the provisions of the Bombay Prohibition Act, 1949 in order to form subjective satisfaction that the petitioner is a bootlegger within the meaning of section 2 (b) of the Act. However, the grounds further indicate that the detaining authority was satisfied that the activities of the detenu as a bootlegger disturbed maintenance of public order and, therefore, it was necessary to detain him with a view to predventing him from acting in any manner prejudicial to public order.

3. Though several grounds have been urged by the learned counsel for the petitioner for challenging the detention order, it is not necessary to refer to all of them, except one which in my opinion merits acceptance.

4. The learned counsel for the petitioner submitted that though two cases which are registered against the detenu under the provisions of the Bombay Prohibition Act, 1949 would indicate that the petitioner is a bootlegger within the meaning of section 2(b) of the Act, there is no material worth the name on record that his activities as bootlegger had disturbed maintenance of public order and, therefore, the detntion order should be set aside.

5. Though the respondents are duly served, no affidavit in reply has been filed by any of them controverting the averments made in the petition. The two cases which are registered against the detenu under the provisions of the Bombay Prohibition Act, 1949 would certainly indicate that the detenu is a bootlegger within the meaning of section 2(b) of the Act. However, unless and until there is material on the record of the case to indicate that his activities as bootlegger has disturbed maintenance of public order, detention order cannot be made. This is the scheme of the Act. Except two cases which are registered against the detenu under the provisions of the Bombay Prohibition Act, there is no material on the record to establish that his activities as bootlegger had disturbed maintenance of public order. Those two cases by themselves do not indicate that public order was at any point of time disturbed by the detenu. In view of absence of any material to indicate that the activities of the detenu as a bootlegger had disturbed

maintenance of public order, I am of the opinion that the impugned order deserves to be quashed and set aside.

6. For the foregoing reasons, the petition succeeds. The order of detention dated June 8, 2000 passed by the District Magikstrate, Kutch at Bhuj, which is produced at Annexure-A to the petition is quashed and set aside. The respondents are directed to release the detenu immediately unless his presence is needed with reference to any other case. Rule is made absolute accordingly with no order as to costs. DSP.

* * *

PVR.